IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 5924 of 2005(E)

PETITIONER:

V.A.SHAJU, S/O. V.A.ANTONY,
VAZHAYIL HOUSE, ARANATTUKARA, THRISSUR DISTRICT.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON

RESPONDENTS:

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1. SALES TAX OFFICR, IIIRD CIRCLE,
THRISSUR.

2. SPECIAL DEPUTY TAHSILDAR,
AIT & SALES TAX (COLLECTIONS), THRISSUR.

3. V.A.JOSE, S/O. V.A.ANTONY,
VAZHAYIL HOUSE, ARANATTUKARA, THRISSUR DISTRICT.

R1 AND R2 BY G.P. SRI.K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE LETTER SENT BY THE 2ND PETITIONER TO THE FIRST RESPONDENT DATED 3.11.2000

EXT.P2 TRUE COPY OF THE CERTIFICATE EVIDENCING THE SUBMISSION OF REGISTRATION APPLICATION DATED 24.11.2000

EXT.P3 COPY OF THE DEMAND NOTICE IN FORM NO.1 ISSUED BY THE 2ND RESPONDENT DATED 2.2.2005

EXT.P4 TRUE COPY OF THE DEMAND NOTICE IN FORM NO. 10 ISSUED BY THE 2ND RESPONDENT DATED 2.2.2005

EXT.P5 TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE FIRST RESPONDENT DATED 17.11.2003

EXT.P6 TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE FIRST RESPONDENT DATED 17.11.2003

EXT.P7 TRUE COPY OF THE PENALTY ORDER ISSUED BY THE FIRST RESPONDENT DATED 17.11.2003

RESPONDENTS' EXHIBITS:; NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 5924 OF 2005

Dated this the 21st day of November, 2007

JUDGMENT

Petitioner is challenging Exts. P5 to P7 orders whereunder petitioner is assessed for sales tax for 1999-2000 and 2000-01. Ext.P7 order is a penalty order under Section 45A of the KGST Act for non-filing of returns and non-renewal of registration. I heard counsel for the petitioner and Government Pleader and I have also gone through the orders. In fact when the matter came up for hearing on 22.2.2005, this Court felt that assessment orders are irresponsible orders issued without any material and this Court issued direction to the Commissioner to instruct officers against passing such orders. Even though a detailed counter affidavit is called for from the Officer, who passed the orders, no counter is filed in the course of last two years. In any case, I do not think this court should undertake the responsibility of disciplining the officers of the department. It is the duty of the head of the department to ensure quality in the officers for better administration.

2. The fact admitted in all the impugned orders is that all what the petitioner has done is to make an application for sales tax

registration declaring an estimated annual turnover of Rs. 10 lakhs. The assessing officer has stated that application for registration was defective and therefore petitioner was called upon to rectify the defect, which the petitioner did not do. However, the Officer has without any justification or any material or without conducting an enquiry assumed that petitioner has carried on business without registration and therefore based on the estimated turnover mentioned in the application for registration, the officer has made addition of equal amount of turnover for the first year and completed the assessment. It is not known on what basis assessment was completed. If a dealer makes an application for registration and does not pursue it, what the officer should do is to conduct enquiry as to whether business was actually being carried on without registration and without filing of returns and remitting tax. Even though application for registration was filed on 23.11.2000 and no monthly return was filed by the petitioner, the Officer does not appear to have conducted any enquiry or found that the petitioner carried on any business. However, arbitrary assessment orders are issued after three years from the date of filing of application for registration. Petitioner's case that business could be commenced only after obtaining registration because only a registered dealer can

collect tax appears to be genuine. Even if business is carried on pending consideration of application for registration, the Officer is bound to assess and demand tax but only on proof of such business carried on by the petitioner. Therefore I find the conduct of the Officer is absolutely irresponsible and indifferent. It is a pitty that based on this kind of orders Government declares that huge revenue is held up in recovery on account of court orders. It is the duty of the Court to protect citizens against arbitrary action and if the disputed tax was allowed to be recovered in this case it would have been a case of failure of duty of this Court. In the circumstances, I dispose of the W.P. setting aisde Exts. P5 to P7 orders with direction to the Commissioner of Commercial Taxes, addl. fourth respondent, to go through the orders by himself and take remedial action , which he deems fit. If evidence is there about business carried on by petitioner during the period, fresh assessments also can be made after giving an opportunity to the petitioner.

(C.N. RAMACHANDRAN NAIR)
Judge